

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1496 OF 1983
With
CROSS OBJECTION NO. 18 OF 2007
In FIRST APPEAL NO. 1496 OF 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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G S R T C - Appellant(s)

Versus

ILLABEN SS PATEL & ORS. - Respondent(s)

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Appearance :

None for Appellant(s).

Shri Nitin M. Amin for Claimants/Respondents.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/04/2007

ORAL JUDGMENT

The Gujarat State Road Transport Corporation has filed the

present appeal under Section 110-D of the Motor Vehicles Act, 1939 (“the Act” for short) being aggrieved by the judgement and award dated 30th September, 1982 passed by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural) in MACT Case No.472 of 1980 awarding a sum of Rs.1,85,000/- in favour of respondent Nos.1 to 6 with interest at the rate of 6% per annum. The respondents, claimants, have also filed their cross objections for enhancement of the amount on the ground that the learned Tribunal made unnecessary deductions in the assessed income, did not properly appreciate the dependency and also did not take into consideration the future prospects of the deceased.

2. The short facts necessary for the disposal of the present matter are that Shirishkumar, husband of applicant No.1, son of original claimant Nos.5 and 6 and father of the minor claimant Nos.2, 3 and 4, on the fateful day, 5th August, 1980, was riding on his scooter and was going to Aslali, when he reached the electric sub-station of National Highway No.8, the bus bearing Registration No. GRS-7005, belonging to the appellant and driven by the present respondent No.7 dashed him from the back-side, the deceased was thrown off the vehicle and the wheel of the bus ran over his head, crushed him and even thereafter, the bus proceeded to a distance of 50 to 60 ft. The deceased died on the spot.

3. The claimants on these facts claimed a sum of Rs.2,68,800/- as future monetary loss for 20 years, Rs.15,000/- towards pain, shock and agony, Rs.25,000/- towards the loss of matrimonial life, Rs.5,000/- towards the expenses of funeral and Rs.6,000/- for the damages to the scooter. The present appellant, owner, and the driver after notice, appeared in the Court and submitted that the claim petition was based on false ground. It was submitted that the accident was result of

rashness, negligence and carelessness of the deceased and in any case, the claimants were required to prove the facts. It was also submitted that the deceased was not working as sub-agent in Ahmedabad District Cooperative Bank Limited and he was also not receiving good salary nor he had better prospects.

4. After casting the issues, the learned Tribunal proceed with the trial, the parties produced their oral and written evidence, the learned Tribunal after hearing the parties, held that that the driver was rash and negligent, the facts were speaking for themselves, the manner in which the bus had hit the scooterist from the back-side would show the negligence on the part of the driver. The learned Tribunal allowed a sum of Rs.1,80,000/- towards the future loss to be suffered by all the claimants and a sum of Rs.5,000/- towards the future expectation and enjoyment of the life.

5. As none appears for the appellant, despite mention of the name of Shri Mayur D. Pandya, learned Advocate for the appellant, I dismiss the appeal.

6. Despite dismissal of the appeal, the Cross Objections, if are pressed are required to be heard and decided in accordance with law.

7. Shri Nitin Amin, learned Counsel appearing for the claimants, submits that the learned Tribunal was unjustified in awarding Rs.1,85,000/- only, less appreciating that the income of the deceased if was Rs.1150/- at the middle of his career, he could have earned a fortune after few years. He also submits that the deceased within eleven years if could become a sub-agent from clerk, then, within next five-seven-ten years, he could have reached to the Office of the Assistant

Manager or the Branch Manager. It is also submitted that the learned Tribunal was absolutely unjustified in assessing the dependency to the tune of Rs.1,000/- only and further erred in not awarding anything towards the loss to the scooter expenses required for untimely cremation and further erred in not awarding any amount towards consortium.

8. In view of the dismissal of the appeal, I must hold that the driver of the offending vehicle was driving the vehicle rashly and negligently and while so driving, he hit the deceased from the back-side, leading to instantaneous death of the deceased.

9. So far as the claim for loss to the scooter is concerned, undisputedly, the widow of the deceased did not speak anything. However, the fact still remains that the scooter was crushed and any scooter somewhere in the year 1982-83, would be worth Rs.3,000/- to Rs.5,000/-. Under the head of loss to the scooter, I award a sum of Rs.3,000/-.

10. The claim towards shock, pain and suffering cannot be allowed because they were not suffered by the claimants. These were suffered by the deceased. In a case where the injured comes before the Court and makes a claim for shock, pain and suffering, then, such claim can always be awarded. In case of death, such claim would not be permissible. That claim is accordingly rejected.

11. So far as the claim relating to loss of company and consortium is concerned, the loss of the husband/father/son can never be compensated in the life. If the Court has to consider the realities of the life, then, every Court would realise that such loss is irreparable. However, the Court has to enter into the guess work and award some

nominal damages. In the present case, without saying anything further, the Court has simply said that conventional figure of Rs.5,000/- towards future expectation and enjoyment of life of the deceased is to be awarded. Unfortunately, the Court showed absolute apathy in the matter in awarding compensation towards the loss of consortium and company. Under the head, I would allow a sum of Rs.15,000/- instead of the sum of Rs.5,000/- only.

12. It is nowhere disputed by anybody that at the time of death of the deceased, his salary was Rs.1,150/- per month. I will assume that to be correct, but, at the same time, I will take into consideration the future prospects of the person, who died untimely. The deceased was a young man of 34 to 35 years. I do not know on what basis the learned Tribunal had observed that he was to work for 18 years only, but, for the present case, I will say that he was to work for 18 years further. The income on the date of the death, was Rs.1,150/- , out of which, I will deduct Rs.150/- as personal expenses of the deceased, which would leave a sum of Rs.1,000/- to be shared and enjoyed by the deceased, his wife and three minor children and the parents. The learned Tribunal, while making further deductions, from the said amount, had granted two units to each adult and one unit to each minor. Thereby, the Court had created 11 units and after deducting 2 units from the salary, it reduced the figure to Rs.740/- and again reduced a sum of Rs.40/- from the said amount. In the opinion of this Court, the learned Tribunal was not justified in making the deductions after deductions. Once the Court was of the opinion that the deceased was spending a sum of Rs.740/- on the family, then, the Court should have rounded it off to Rs.750/-.

13. It has come on the record that that basic salary of the sub-agent was Rs.969/- and if such sub-agent becomes the Assistant

Manager, his basic salary would be Rs.1825/- and the basic salary of the Manager would be Rs.2275/-. During long 18 years before superannuating the service or superannuate. The deceased in any case could become the Assistant Manager if he had the prospects to become a sub-agent from a clerk within a period of 11 years. The salary of such Assistant Manager would not have been less than Rs.2,400/- per month. I assume this because on basic of Rs.969/-, the total emoluments of the deceased were Rs.1150/-. Therefore, on Rs.1825/-, the total emoluments would be not less than Rs.2,500/-. Out of the said amount, if the personal expenses of the deceased are deducted, and even thereafter, the dependency is calculated, it would not be less than Rs.1,500/- per month and/or Rs.18,000/- per year. The question still would be that what multiplier should be applied. In the opinion of this Court, the learned Tribunal was not wrong in applying the multiplier of 15. I would accept the said multiplier and would allow a sum of Rs.2,70,000/- towards the future loss of income. To this amount, a sum of Rs.15,000/- towards the loss of consortium and company shall be added, and a sum of Rs.3,000/- as loss of the scooter would be also added to it. The claimants/respondents, in view of the above calculation and in the opinion of this Court, would be entitled to a sum of Rs.2,88,000/- with interest.

14. Shri Amin, learned Counsel for the appellant, submits that the learned Tribunal was unjustified in granting only 6% interest per annum, while the trend is 9%.

Taking into account the present rate of Bank interest, on the deposits, so also, the earlier rates, and the directions of the Supreme Court, in relation to award of interest, I allow 9% interest on the amount so awarded. The amount of Rs.2,88,000/- shall carry interest from the

date of the claim application till the amount is paid in full.

15. In the result, the Cross Objection is allowed to the extent indicated above. There shall be no order as to costs.

[R.S.Garg, J.]

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